APPENDIX A.

Indiana Statutes and Supreme Court Rules Governing Appeals.

(a)

Relating to Vacation Appeals:

2-3206 (700) Appeal after term—Notice to appellees—Service of.—After the close of the term at which the judgment is rendered, an appeal may be taken by the service of a notice in writing on the adverse party, or his attorney, and also on the clerk of the court in which the proceedings were had, stating the appeal from the judgment, or some specific part thereof; or such appeals may be taken by procuring from the clerk of the court a transcript of the record, and proceeding in the suit, or so much thereof as is embraced in the appeal, and filing the same in the office of the clerk of the Supreme Court, who shall indorse thereon the time of filing, and issue a notice of the appeal to the appellee. The appellee, or appellees, shall be served with such notice of appeal by the sheriff of the Supreme Court, or by such other officer as is authorized by law to serve the same, and such service shall be made in the same manner as a summons or other process, is required by law to be served upon any such appellee in civil actions filed in circuit courts of this state. (Acts 1881 (Spec. Sess.), ch. 38, *635, p. 240; 1933, ch. 106, *1, p. 694.)

2-3208 (702) Appeal after term—Bond—Supersedeas.—An appeal taken after the close of the term shall not stay execution or other proceedings in the court below unless an order to that effect be granted by the Supreme Court in term, or any judge thereof in term or vacation, which shall be indorsed on the transcript. The court or judge shall, at the time of making the order, direct that the appellant shall give bond to the appellee, which condition is required when an appeal is taken during the term at which the judgment is rendered. (Acts 1881 (Spec. Sess.), ch. 38, *642, p. 240.)

2-3213 (707) Vacation appeal by part of coparties—Notice to coparties necessary.—A part of several coparties may appeal to the Supreme or Appellate Court, but, in such case, they must serve written notice of the appeal upon all the other coparties or their attorneys of record, and file proof thereof with the clerk of such court, and whenever it shall be made to appear to such court by satisfactory proof that such other coparties, or any of them, are not residents of the state and have no attorneys of record in the court below, or that such attorneys cannot be served with such notice in the state, the court may order that notice of the pendency of the appeal be given to such non-resident coparties in some newspaper printed and published in the state, for three (3) weeks successively; after which, if proper notice has been given the appellees, the court shall proceed in all respects as if said non-resident coparties had been personally served with notice of said appeal. After notice to said coparties in either of the ways provided in said section, unless they appear and decline to join in said appeal, they shall be regarded as properly joined, and shall be liable for their due proportion of the costs. If they decline to join, their names may be stricken out, on motion; and they shall not take an appeal afterwards, nor shall they derive any benefit from the appeal, unless from the necessity of the case, except persons under disabilities: Provided, however, That nothing in this act shall be construed to repeal or modify an act entitled, An Act in relation to appeals to the Supreme and Appellate Court, approved March 8, 1895, (Acts of 1895, page 179), or any part thereof, but the provisions of said act shall continue in force the same as if it has been enacted after the taking effect of this act. (Acts 1881 (Spec. Sess.), ch. 38, *629, p. 240; 1899, ch. 3, *1, p. 5.)

2-3214 (708) Appeal by coparties—Making appellants appellees and vice versa—Notice, how given.—In all appeals by one or more coparties now pending in the Supreme or Appellate Courts of Indiana, or hereafter taken to either of such courts, the parties named in such appeals shall be properly before such courts for all purposes, if duly served with notice as required by law, whether such parties shall

be named as appellants or as appellees, and the fact that one or more parties are named as appellants when they should be appellees, or appellees when they should be appellants, shall not affect the jurisdiction of the court or be cause for dismissing such appeal: Provided, however, That when notice of such appeal is required to give the court jurisdiction over the appellees or the coparties not appealing, notice shall be served on such coparties in the same manner as is now or may hereafter be required to be given appellees. (Acts 1925, ch. 19, *1, p. 41.)

Supreme Court Rules:

Rule 2-1. Statutory Rules Adopted.—Chapter 76, Acts of 1937, has heretofore been abrogated. All other rules of appellate procedure and practice adopted by statutory enactment and in effect on June 21, 1937, shall continue in full force and effect, except as herein otherwise provided.

Rule 2-2. Time for Appeal.—In taking appeals to the Supreme or Appellate Court from final judgments in civil and criminal cases, the assignment of errors and transcript of the record must be filed in the office of the clerk of the court to which the appeal is taken within 90 days after the date of the judgment or the ruling on the motion for a new trial. If within the time for filing the assignment of errors and the transcript of the record as above provided it is made to appear by petition, notice of the petition having been given to the adverse parties, that notwithstanding due diligence on the part of the parties seeking to appeal, it has been impossible, and will be impossible, to procure a bill of exceptions containing the evidence in time to permit the filing of the assignment of errors and transcript on appeal within 90 days, the court to which the appeal is sought may in its discretion grant a reasonable extension of time within which to file said transcript, and may at the same time direct the trial court to extend the time granted for the filing of the bill of exceptions. When the appellant is under legal disability at the time the judgment is rendered, he may file the tran-

script of the record within 90 days after the removal of the disability.

Rule 2-3. Unperfected Term Appeal. If an appeal is begun as a term appeal, but one or more of the steps necessary to perfect such appeal is omitted, the appeal may be perfected under the rules governing vacation appeals.

Rule 2-8. Parties. The assignment of errors shall contain the full names of all parties to the judgment, and process, when necessary, shall issue accordingly.

Rule 2-11. Special Appearance. A special appearance shall be so designated, shall be in writing, and shall state the particular relief demanded, together with the facts in support thereof.

Rule 2-30 (Former Rule 36) Dismissal. Where a case not appealed in term has been on the docket for 30 days, and there is no appearance by the appellee and no steps taken to bring him into court, or where notice has been issued and proves ineffectual from any cause, and no steps are taken for 30 days after the issuance of such ineffectual notice to bring the appellee into court, the clerk shall enter an order dismissing the appeal.

(b)

Relating to Term Time Appeals:

2-3204 (698) Appeal during term—Stay, bond, transcript. —When an appeal is taken during the term at which judgment is rendered, it shall operate as a stay of all further proceedings on the judgment, upon an appeal bond being filed by the appellant, with such penalty and surety as the court shall approve, and within such time as it shall direct, payable to the appellee, with condition that he will duly prosecute his appeal and abide by and pay the judgment and costs which may be rendered or affirmed against him; and if the appeal is taken from a judgment for the recovery of real property, or the possession thereof, by the party against whom the judgment for the recovery is rendered, then the condition of the bond shall further provide that the appellant shall also pay all damages which may be sustained by the appellee for the mesne profits, waste or dam-

age to the land during the pendency of the appeal; and if from a judgment for the recovery or return of personal property, or for such property or its value, then that if he deliver or return the property, he will also pay the reasonable value of its use and any damage it may sustain during the pendency of an appeal. The transcript shall be filed in the office of the clerk of the Supreme Court within sixty (60) days after filing the bond; it being provided that in any action now or hereafter pending, the court in which said appeal bond was filed, or the judge thereof in vacation, may grant a reasonable extension of the time for filing said transcript in the office of the clerk of the Supreme Court, upon written application made by any party appellant to said appeal, duly verified by such party or his attorney showing that said transcript can not be filed in said office of the clerk of the Supreme Court within sixty (60) days from the time of filing said appeal bond, which application shall show the date of the filing of the appeal bond in the trial court and such facts which prevent the filing of the transcript in the office of the clerk of the Supreme Court within sixty (60) days after filing the appeal bond, and also showing that the failure or inability to file such transcript within such sixty (60) days after filing such appeal bond was not caused by the negligence of the party asking for such extension; and provided further that such application shall be filed in the office of the clerk of the court in which application shall be filed in the office of the clerk of the court in which said appeal bond was filed within the time allowed by law for filing such transcript in the office of the clerk of the Supreme Court. The filing of the transcript in the office of the clerk of the Supreme Court within the extended time, as granted by the court in which such appeal bond was filed, or the judge thereof in vacation, shall be sufficient and effective to the same extent as though said transcript had been filed in the office of said clerk of the Supreme Court within sixty (60) days after the filing of said appeal bond. (Acts 1881 (Spec. Sess.), ch. 38, *632, p. 240; 1917, ch. 30, *1, p. 71).

Rules governing joinder of parties in the trial courts also governing appellate procedure where no other provision is

made under Buchanan *v.* Morris (1926) 198 Ind. 79 (151 N. E. 385).

APPENDIX B.

(A) The prayer of Plaintiff's complaint:

"Wherefore, Plaintiff asks and prays that said Defendants Burwell W. Sale and Gertrude B. Sale, and each of them, be permanently enjoined from issuing to themselves, or to any other person, certificates for shares from the unissued shares of the capital stock of said corporation for a sum or sums of money or for property less than the par value of said shares of capital stock or as payment for any debt shown on the books of the corporation to be due and owing to said Burwell W. Sale and Gertrude B. Sale, or either of them, and from voting, selling or transferring to any person all or any part of said 108.77 shares of the capital stock of the Defendant Wabash Valley Coach Company, issued to Burwell W. Sale in certificate No. 15, dated September 16, 1929; and that said shares of stock be canceled and declared null and void, and that said Defendants Burwell W. Sale and Gertrude B. Sale, and each of them, be required to account for and pay into the treasury of the Defendant Wabash Valley Coach Co. any and all sums of money wrongfully appropriated by them from the funds and assets of said corporation and that a restraining order be issued herein without notice restraining said Defendants Burwell W. Sale and Gertrude B. Sale, and each of them, from voting, selling or transferring to any person all or any part of said 108.77 shares of the capital stock of said Defendant corporation, Wabash Valley Coach Co., from issuing to themselves or to any other person certificates for shares from the unissued shares of the capital stock of said corporation for a sum or sums of money or for property less than the par value of said shares of capital stock or as payment for any debt shown on the books of the corporation to be due and owing to said Burwell W. Sale and Gertrude B. Sale, or either of them, until a hearing is had upon a temporary injunction, and for all other relief just and equitable in the premises." (R. 15-16)

(B) Finding and Temporary Injunction:

"The court after hearing the evidence and after being duly advised in the premises herein, finds for the plaintiff; that a temporary injunction be granted as prayed for by plaintiff in his petition for injunction. And the Court further finds that said temporary injunction be granted, providing that no meetings of the stockholders are held.

"It Is Therefore Ordered, Adjudged and Decreed by the court that a temporary injunction be and is granted as prayed by the plaintiff in his petition, in full force and effect, and that said temporary injunction be and is granted under promise and providing that no meetings of the stockholders herein are held; all until the further order of this court." (R. 2)

(C) Fourth conclusion of Law and Final Injunction:

"4. The temporary injunction heretofore granted should be made permanent and continued in full force and effect" (R. 26).

"It is therefore ordered, adjudged and decreed by the Court that the temporary injunction heretofore granted in this cause be and the same hereby is made perpetual and permanent, and continued in full force and effect.

"It is further ordered, adjudged and decreed that the defendant, Gertrude B. Sale, surrender to the defendant, Wabash Valley Coach Company, for cancellation, stock certificate No. 17 of said corporation, issued on or as of the 17th day of September, 1929, to and in the name of said defendant, Gertrude B. Sale, and that upon surrender to it of said stock certificate No. 17 the defendant, Wabash Valley Coach Company, cancel or cause to be canceled upon its corporate records said stock certificate No. 17.

"It is further ordered, adjudged and decreed that the plaintiff recover his costs herein, taxed at $....." (R. 27).

APPENDIX C.

Further Digest of Petitioner's Special Appearance and Verified Motion to Dismiss (Petitioner's Claim of Constitutional Right).

(a) The following excerpts indicate the specific claims of right made by the petitioner.

It further set up:

"That said representation of the said Wabash Valley Coach Company through the same counsel as was selected by the said Sales as appellants, does not constitute due process of law under the said Fourteenth Amendment of the Constitution of the United States, but on the contrary operates to deny and does deny the Wabash Valley Coach Company the equal protection of the laws under said Fourteenth Amendment and, if treated as being binding upon said Wabash Valley Coach Company will deprive the Company of its interest in said judgment and its property rights in respect to its right to issue and sell shares of stock in lieu of the cancelled shares without due process of law and the equal protection of the laws in contravention of said amendment" (R. 64-65).

It pleaded:

"That the lodging and filing of said appeal is void on account of the said breach of trust of said officers, and the said Sales and Sales, appellants herein, cannot profit or avail themselves of their own wrong, in using and employing the attorney whom they selected to represent the corporation and in part obtained through the resources and credit of said corporation, also to lodge an appeal for them individually, that the said Wabash Valley Coach Company by reason of its interest in said judgment is not entitled to and does not claim to be entitled to appeal from the said judgment" (R. 65).

It further charged:

"That for the reasons aforesaid the said purported lodging of said appeal herein and the joining of said Wabash Valley Coach Company, as an appellant therein, through said void dual representation of counsel does not constitute a voluntary appearance so as to confer jurisdiction upon

this court over this appeal or over the persons of said corporation, and that treating or recognizing the said Wabash Valley Coach Company as appearing as an appellant, or said appeal as duly lodged herein, will deny to it the equal protection of the laws and due process of law, and thereby deprive it of its property all in contravention of the Fourteenth Amendment to the federal constitution" (R. 65).

"That the above entitled appeal as an entirety should be dismissed for want of jurisdiction herein, not only for the reasons herein before set out and upon the facts herein alleged and upon the record in this cause in that since the said Wabash Valley Coach Company has not legally been made an appellant in this case, and has not been notified as required by law as an adverse party to the appellants herein, although it is benefitted by said judgment, * * *" (R. 65-66).

It further alleged:

"That this court does not have before it the parties necessary to a complete determination of the controversy here involved or the complete determination and settlement of the question here involved, namely, the validity of the issue of the stock of this petitioner cancelled by the judgment below; that said question of the validity of the issue of said stock is a single and entire question and is wholly integral and not susceptible of determination as to any less than all the parties to the judgment."

It further alleged:

"That unless the said officers are recognized by this court, and the legal representation secured by them for said corporation is recognized by this court, then no representation of said corporation in this court can be had or is procurable independent of the control of the two said Sales, appellants herein; that a denial of recognition to said legal representative and said newly chosen officers will deny this corporation due process of law and the equal protection of the laws, and will deprive this corporation of valuable property rights in contravention of the Fourteenth Amendment of the Constitution of the United States" (R. 61).

"That there is no conflict of interest between said corporation and the said appellee, Turner, or said Walters;

that it is to the best interest of said corporation that said judgment remain unreversed, and that counsel filing this motion and authorized to appear for said corporation and file this motion be recognized and treated as truly representing this corporation before this court" (R. 61).

It further set up:

"That by reason of the said Wabash Valley Coach not being made a party to this appeal this court is without jurisdiction to proceed herein, among other reasons, because this court is without power to completely determine and settle the question involved herein and the controversy involved herein; and that further proceeding in this cause except to dismiss the said appeal denies due process of law and will operate to deprive and will deprive said Wabash Valley Coach Co. of its said property and interest in said judgment and its interest in having its right to issue and sell said cancelled stock unclouded without due process of law and in denial of the equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States" (R. 66).

And further:

"That the said Wabash Valley Coach Company is a necessary and indispensable party to said appeal and to any judgment or determination of the court therein; that said Coach Company has not been validly represented in the appeal; that the pretended representation of counsel therefor is null and void" (R. 66-67).

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 924

WABASH VALLEY COACH CO., A CORPORATION,
Petitioner,

vs.

GERTRUDE B. SALE, AS PRESIDENT OF WABASH VALLEY COACH CO., BURWELL W. SALE, AS SECRETARY-TREASURER OF WABASH VALLEY COACH CO., GERTRUDE B. SALE AND BURWELL W. SALE AND CHARLES A. TURNER,

Respondents.

The undersigned Wabash-Valley Coach Co., a corporation, by and through the undersigned President and Secretary of Wabash Valley Coach Company being duly authorized by the Board of Directors of said corporation do now hereby employ, authorize and direct Thomas F. O'Mara of Terre Haute, Indiana and a member of the Bar of the Supreme Court of the United States, to appear for said Wabash Valley Coach Co., a corporation duly organized and doing business under the laws of the state of Indiana with its principal office at Terre Haute, Indiana, and to represent the said corporation in the above entitled cause and in all other matters appertaining to a review in the Supreme Court of the United States of the judgment of the Supreme Court of Indiana rendered on the 14th day of January, 1943

in the course of an appeal in Cause No. 27,718 in said State Supreme Court reversing the judgment of the Superior Court of Vigo County, Indiana, No. 2, rendered on the 28th day of January, 1942: With full authority to act in all of said matters for and on behalf of and as attorney for said corporation.

In Witness whereof the said corporation, Wabash Valley Coach Co., hereunto sets its hand and seal by and through the undersigned President and Secretary thereof.

Dated this 7th day of March, 1943.

WABASH VALLEY COACH COMPANY,
By CHARLES A. TURNER,
President.

Attest:
FRANK P. WALTERS,
Secretary.

[SEAL.]

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